

VERIFIED STATEMENT

OF

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POLICY DEPARTMENT

TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

PETITION FOR ARBITRATION OF INTERCONNECTION RATES,  
TERMS AND CONDITIONS AND RELATED ARRANGEMENTS  
BETWEEN LEVEL 3 COMMUNICATIONS, LLC. AND ILLINOIS  
BELL TELEPHONE COMPANY PURSUANT TO SECTION 252(b) OF  
THE TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. 04-0428

OCTOBER 5, 2004

**Issues: GT&C 6, 7, 9.3, PC 1, VC 1, PC 2, VC 2**

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1   **I.       INTRODUCTION**

2  
3   **Q.       Please state your name and business address.**

4   A.       My name is A. Olusanjo Omoniyi and my business address is 527 East  
5            Capitol Avenue, Springfield, Illinois 62701.

6   **Q.       What is your occupation?**

7   A.       I am a Policy Analyst in the Telecommunications Division of the Illinois  
8            Commerce Commission (the "Commission").

9   **Q.       Describe your educational and professional background.**

10   A.       In 1987, I graduated from Southern Illinois University at Carbondale with a  
11            Bachelor of Arts degree in Cinema & Photography and a Bachelor of  
12            Science degree in Radio-Television. I obtained a Master of Arts degree in  
13            Telecommunications in 1990 and a Juris Doctor degree in 1994, also from  
14            Southern Illinois University at Carbondale. I am licensed to practice  
15            before the Supreme Court of Illinois, the United States District Court, of  
16            both the Central and Southern Districts of Illinois, and the United States  
17            Court of Appeals for the Seventh Circuit.

18 I have been involved in various aspects of the telecommunications  
19 industry for over a decade, including Internet development, systems  
20 integration, broadcasting, long-distance telephone service resale and  
21 telecommunications practice. I have been the owner, part-owner and  
22 legal advisor for an Internet access provider. I was one of the original  
23 founders of Internet Developers Association (IDA), which has now  
24 metamorphosed into the Association of Internet Professionals (AIP). I was  
25 co-founder and part owner of Bizhelp Services, a computer systems  
26 integration and Internet development business. Upon my employment  
27 with the Commission, I divested all my interests in the telephony  
28 businesses, telecommunications-related law practice and removed all my  
29 business websites in order to avoid any potential conflict of interests. I am  
30 a member of a number of telecommunications professional associations.

31 **Q. Can you describe the purpose of your testimony?**

32 A. The purpose of my testimony is to present my analysis and  
33 recommendations regarding six General Terms and Conditions ("GT&C")  
34 Issues in this docket. The parties, SBC Illinois (SBC) and Level 3  
35 disagree on a number of issues related to the scope, duration of terms  
36 and implementation procedures to be included in the interconnection

37 agreement. In the instant testimony, I will address the policy issues related  
38 to this docket by examining the GT&C issues, which are:

39 1. GT&C 6: Under what circumstances may SBC disconnect  
40 services for nonpayment?

41 GT&C 7: Should Level 3's failure to pay undisputed charges  
42 entitle SBC to discontinue providing all products and services  
43 under the Agreement, or only the product(s) or service(s) for  
44 which Level 3 has failed to pay undisputed charges?

45 2. PC 1: Should this Appendix be the exclusive document  
46 governing physical collocation arrangements between Level 3  
47 and SBC, or should Level 3 be permitted to order collocation  
48 both from this Appendix and state tariff?

49 VC 1: Should this Appendix be the exclusive document  
50 governing virtual collocation arrangements between Level 3 and  
51 SBC, or should Level 3 be permitted to order collocation both  
52 from this Appendix and state tariff?

53 3. PC 2: Should Level 3 be permitted to collocate equipment that  
54 SBC has determined is not necessary for interconnection or  
55 access to UNEs or does not meet minimum safety standards?

56 VC 2: Should Level 3 be permitted to collocate equipment that  
57 SBC has determined is not necessary for interconnection or  
58 access to UNEs or does not meet minimum safety standards?

59  
60 **II. GT&C 6 – DISCONNECTION OF SERVICES FOR NONPAYMENT**  
61 **GT&C 6 – Circumstances for Disconnection of Services for**  
62 **Nonpayment. GT&C 7 – Discontinuance of Services for Failure to**  
63 **Pay Undisputed Charges**

64  
65 **Q. Please describe GT&Cs 6 and 7, Disconnection of Services for**  
66 **Nonpayment, Petition Issue 11: Sections 8.8.1 and 9.2 of the**  
67 **Agreement.**

68 **A.** GT&Cs Issues 6 and 7 address the issue of disconnection of services for  
69 nonpayment of undisputed charges between the parties. According to both  
70 Level 3 and SBC, the issue in GT&C 6, as enumerated in Section 8.8.1 of  
71 the Agreement, is under what circumstances may SBC disconnect  
72 services for nonpayment.<sup>1</sup> Also, Issue GT&C 7, as enumerated in Section  
73 9.2 of the Agreement, contains a more detailed description of what

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<sup>1</sup> See Level 3 – SBC 13State – DPL - General Terms and Conditions – GT&C 6, pp. 5-6.

74 products and services could be disconnected under the Agreement for  
75 Level 3's failure to pay undisputed charges. In essence, in the event that  
76 Level 3 fails to pay its bills, what process and procedure should SBC  
77 undertake to disconnect services it offers to Level 3, and what products  
78 and services could SBC disconnect?

79 **Q. Please describe Level 3's position on this issue.**

80 A. With regards to both GT&C Issues 6 and 7, Level 3 states that it is  
81 concerned that the Agreement provide it with appropriate protections  
82 against SBC's unilateral disconnection of its end users with little or no  
83 justification.<sup>2</sup> As a result, Level 3 proposes that the Agreement contain  
84 terms that require SBC to comply with all procedures set forth under  
85 Section 8 and otherwise set forth in applicable law regarding  
86 discontinuance of service and/or termination of this Agreement.<sup>3</sup> In  
87 essence, Level 3 prefers that SBC should be limited to disconnection of  
88 only those services for which Level has not paid.

89 With regards to GT&C 7, Level 3 restates its position as in GT&C 6, with  
90 some modification on the choice of words for the provision in Section 9.2.

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<sup>2</sup> *Id.* at 5-7.

<sup>3</sup> *Id.*

Level 3 proposes that Section 9.2 state that failure to pay undisputed charges “may” be grounds for disconnection of services rather than “shall.”<sup>4</sup> Level 3 is concerned that the Agreement provides it with appropriate protections against SBC’s unilateral demands for assurance of payments with little or no justification.<sup>5</sup> Level 3 also proposes that SBC only be allowed to disconnect a specific service or product for which it has failed to pay the undisputed amount.<sup>6</sup> This will prevent SBC from disconnecting any and all services, as SBC’s position would permit, which would leave Level 3 at risk of losing its entire customer base subject to the whims of SBC.<sup>7</sup>

**Q. Please describe SBC’s position on this issue.**

A. SBC disagrees with Level 3’s proposals for both GT&C Issues 6 and 7. With regard to GT&C 6, SBC’s proposes that it should be, after due notice and a reasonable amount of time, allowed to disconnect any and all services if Level 3 fails to pay the undisputed amounts. SBC’s language contemplates a multi-tiered process: first, notification of overdue amounts;

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<sup>4</sup> *Id.* at 6.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 7.

<sup>7</sup> *Id.* at 7.

107 next, suspension of new and pending orders if such amounts remain  
108 unpaid; and finally, disconnection if, after two notices, such amounts  
109 remain both unpaid and undisputed.<sup>8</sup> SBC argues that it is important to  
110 recognize that this issue concerns amounts that Level 3 does not dispute  
111 and are due to SBC.<sup>9</sup> Furthermore, SBC contends that it does not  
112 propose disconnection for amounts that are subject to a billing dispute.<sup>10</sup>  
113 SBC points out that Level 3 proposes that SBC should be limited to  
114 disconnection of only those services for which Level 3 has not paid.<sup>11</sup>  
115 SBC argues that this approach is problematic because it permits a CLEC  
116 to avoid disconnection by moving, for example, UNE lines that Level 3 has  
117 not paid for (and for which payment is not in dispute), to resale service.<sup>12</sup>  
118 Thus SBC contends that a CLEC could avoid payment and disconnection  
119 in perpetuity.<sup>13</sup> SBC's position is that if Level 3 refuses to pay an  
120 undisputed amount, SBC should have the right to disconnect service.<sup>14</sup>

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<sup>8</sup> *Id.* at 5-6.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

121 SBC also objects to the inclusion of additional language by Level 3 that  
122 states: “and otherwise set forth in applicable law.”<sup>15</sup> SBC considers this  
123 language “unacceptable” because it is a “vague term.”<sup>16</sup> SBC believes  
124 that approval of this language proposed by Level 3, just as it argues in the  
125 “Lawful UNE provisions, is “an invitation to disputes later about what is  
126 and what is not “applicable law.”<sup>17</sup>

127 With regards to GT&C Issue 7, Section 9.2, SBC raised an additional  
128 issue in terms of the parties’ disagreement regarding the choice of words.  
129 First, SBC argues that the provision in Section 9.2, should say that failure  
130 to pay “shall be” grounds for disconnection, not that it “may be.”<sup>18</sup> SBC  
131 contends that the use of “shall” does not mean that disconnection is  
132 automatic, but only that under this Agreement, nonpayment is, in fact, a  
133 legitimate basis for disconnection under the circumstances described.<sup>19</sup>  
134 Second, SBC argues that charges submitted pursuant to the Agreement

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<sup>15</sup> SBC Ex. 4.0 Egan at 26-28.

<sup>16</sup> *Id.* at 27.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 6-7; SBC Ex. 4.0 (Egan) at 29-33.

135 should either be disputed or paid.<sup>20</sup> Further, SBC states that Level 3's  
136 proposed language not only allows 30 calendar days to respond to  
137 respond to a notice of termination, but also to avoid payment on  
138 undisputed charges indefinitely.<sup>21</sup> In addition, SBC contends that if an  
139 amount is not disputed, there is no reason that Level 3 cannot pay such  
140 amount by the bill due date, but without question Level 3 should remit after  
141 two late payment notices. Finally, SBC argues that its proposed language  
142 in Section 9.2 applies when Level 3 has failed to remit payment by the bill  
143 due date and not responded to two late payment notices.<sup>22</sup>

144 **Q. What is your recommendation regarding the parties' positions?**

145 A. My recommendation is that the Commission should accept SBC's position,  
146 with some modification to accommodate Level 3's position regarding the  
147 services that could be disconnected in an instance when Level 3 either  
148 fails or refuses to pay an undisputed amount. I recommend that SBC  
149 should have the right to disconnect service, but with some well-defined

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id. at 8.*

150 guidelines for such a process. I recommend that SBC should be ordered  
151 to follow a set of carefully articulated bill collection processes.

152 The collection process should include at least the following two steps:

153 1. SBC should provide Level 3 adequate notice in writing  
154 regarding the bill in question by forwarding the bill to an  
155 appropriate official designated by Level 3. Currently, SBC  
156 proposed sending two notices of disconnection for undisputed  
157 and unpaid charges but without specifying when it would be  
158 done. SBC needs to clarify how those notices would be sent to  
159 Level 3 and the applicable time interval for each notice.

160 2. SBC's notice to Level 3 should contain a specific deadline for  
161 disconnection of service to Level 3 if payment, in a specified  
162 amount, is not forthcoming, and should identify the service(s)  
163 that SBC will disconnect.

164

165 **Q. What are the reasons for your recommendation?**

166 A. Looking at the arguments offered by the parties, it appears an appropriate  
167 policy will be to create a disconnection process that is a blend of the  
168 parties' positions, for a number of reasons. First, SBC's concern that Level  
169 3 should either dispute a bill or pay it is a reasonable request. There is  
170 nothing unusual about such a position and it is a common commercial  
171 practice that payment would be made for services, unless the paying party  
172 disputes the bill. Second, SBC indicated that there would be no

disconnection of service in the event that a bill is disputed. A third reason is Level 3's concern that SBC may simply disconnect any or all service to Level 3's end users. SBC's proposal ultimately seems to grant SBC the unilateral authority to decide which services of Level 3 that could be subject to disconnection in the event of nonpayment. I recommend that SBC should not be allowed to disconnect any and all services; particularly, SBC should not disconnect those services paid by Level 3. Any result contrary to this recommendation is likely to engender confusion between the parties and also severely affect Level 3 end-users (or end users of those carriers to which Level 3 might sell services) who have nothing to do with the bill payment problem between the two carriers. Thus, the public interest in maintaining uninterrupted service to end-users should take precedence in the consideration of this issue.

Finally, in addition to the public interest concerns enumerated above, an equally important concern is SBC's fear that Level 3 could avoid payment and disconnection in perpetuity. This could occur if Level 3, for example, moves its UNE lines that are not paid for, to resale service. This potential problem could be addressed by specifically forestalling migration of

192 services that are not paid for to paid-for services. For example, SBC  
193 should be able to bar Level 3 from moving its UNE lines that are not paid  
194 for to resale. This proposal should be more than adequate to address any  
195 attempt by a CLEC, or Level 3 in the instant case, to engage in an evasive  
196 practice in which undisputed bills are not paid and yet SBC would be  
197 unable to disconnect such services of Level 3. Therefore, rather than allow  
198 large-scale and generalized disconnection of service, which could affect  
199 both paid and unpaid services of Level 3, a targeted solution which affects  
200 only the unpaid services is a better solution. Therefore, with regards to the  
201 dispute between the parties in GT&C Issue 7 as in Section 9.2 of the  
202 Agreement, I recommend that SBC's position should be adopted with  
203 some modification and accommodation of Level 3's position. SBC's  
204 proposal that it should be granted the right to disconnect for products and  
205 services after two written notices have been given to Level 3 is reasonable  
206 and should be accepted. I recommend that the word "shall" as proposed  
207 by SBC should be used to offer both parties certainty on the  
208 consequences of undisputed charges. In contrast, any provision that  
209 states that the disconnection "may" be undertaken for undisputed bill  
210 would likely lead to confusion and disagreement on the issue of when,

how and what disconnection should be done between the parties. Finally, Level 3's concern that it should not lose its entire customer base as a result of SBC's unilateral and potentially arbitrary disconnection is valid and should be taken into account. Therefore, I recommend that disconnection be specific and limited in scope to the products and services for which Level 3 has not paid and has not disputed the charges, after two reasonable written notices from SBC at a well-defined intervals.

**III. TERMS AND CONDITIONS FOR COLLOCATION ARRANGEMENTS**

**PC-1 – TERMS AND CONDITIONS GOVERNING PHYSICAL COLLOCATION**  
**VC-1 – TERMS AND CONDITIONS GOVERNING VIRTUAL COLLOCATION**

**Q. Please describe Issue PC-1, Terms and Conditions Governing Physical Collocation, Sections 4.4, 7.3 and 7.3.3; and, Issue VC-1, Terms and Conditions Governing Virtual Collocation, Sections 1.2 and 1.10 of the Agreement.**

**A.** The issues in both PC-1, Terms and Conditions Governing Physical Collocation and VC-1, Terms and Conditions Governing Virtual Collocation, are identical. According to the parties, the issue is whether the relevant Physical Collocation Appendix and Virtual Collocation Appendices should comprise the sole and exclusive terms and conditions governing physical and virtual collocation, respectively; or whether Level 3 should be permitted to order collocation products and services both from

234 the relevant Appendix and from the existing state tariff.<sup>23</sup> In essence,  
235 should Level 3 be allowed, “to ‘pick and choose’ rates, terms and  
236 conditions from either its interconnection agreement with SBC, or from a  
237 state tariffs”?<sup>24</sup>

238

239 **Q. Please describe Level 3’s position on this issue.**

240 A. Level 3 argues that Section 252(i) requires that a local exchange carrier  
241 shall make available any interconnection, service or network element  
242 provided under an agreement approved by a state commission to any  
243 other requesting telecommunications carrier.<sup>25</sup> Level 3 also states that it  
244 does not agree with SBC’s interpretation of the cases upon which it relies  
245 in support of its positions.<sup>26</sup> Level 3 contends that acceptance of, or  
246 Commission adoption of, SBC’s proposals could serve as a waiver of  
247 Level 3’s independent rights under the federal act, FCC orders and  
248 regulations, as well as any existing state orders and regulations.<sup>27</sup> Level 3

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<sup>23</sup> See Level 3-SBC 13 State –DPL – Physical Collocation, PC-1, at 1-2. and Level 3-SBC State – DPL- Virtual Collocation, VC-1, at 1-2.

<sup>24</sup> SBC Ex. 5.0 at 3.

<sup>25</sup> See Level 3-SBC 13 State –DPL – Physical Collocation, PC-1, at 1-3. and Level 3-SBC State – DPL- Virtual Collocation, VC-1, at 1-2.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

argues it cannot and will not waive these rights. Furthermore, Level 3 states that the tariff may be amended from time to time with new rates, terms and conditions that are more favorable than what the parties have placed in their interconnection agreement.<sup>28</sup> According to Level 3, it should be entitled, as any other carrier is entitled, to purchase services at rates, terms and conditions that may be offered to any other carrier whether it is more favorable in the interconnection agreement or as updated in the SBC tariff.<sup>29</sup> Level 3 states that it is willing to be bound by the rates, terms and conditions pursuant to which SBC offers the tariffed services Level 3 elects to purchase, but argues that it should not lose the benefit of the terms and conditions negotiated under the Agreement in order to avail itself of the publicly available tariffs SBC makes available to all carriers.<sup>30</sup>

Finally, Level 3 argues, “the telecommunications industry is constantly evolving.”<sup>31</sup> Level 3 contends that as new developments take place, SBC modifies its retail and wholesale service offerings by changing its state

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Direct Testimony of Victoria R. Mandell, Level 3 Communications, LLC at 30-1.

<sup>31</sup> *Id.*

and federal tariffs, including its federal tariffs that offer collocation services.<sup>32</sup> In essence, Level 3 believes it should be able to pick and choose rates, terms and conditions that will favor its business needs from either the interconnection agreement with SBC, or the state SBC tariff.

**Q. Please describe SBC's position on this issue.**

A. SBC argues that Level 3 should not be able to pick and choose rates, terms and conditions from both its interconnection agreement with SBC and a state tariff, to the extent one is available.<sup>33</sup> Further, SBC contends that at least two federal courts of appeal have held, interconnection agreements are the exclusive process by which a CLEC obtains rates, terms and conditions for interconnecting with an ILEC or obtaining access to an ILEC's UNEs as provided for a Section 251 of the Telecommunications Act of 1996 citing *Wisconsin Bell Inc. v. Bie*, 340 F.3d 441, 442-45 (7<sup>th</sup> Cir. 2003); *Indiana Bell Tel. Co. v. Indiana Util. Reg. Comm'n*, 359 F.3d 493, 497-98 (7<sup>th</sup> Cir. 2004); and *Verizon North, Inc. v. Strand*, 309 F.3d 935, 940-41 (6<sup>th</sup> Cir. 2002).<sup>34</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> See Level 3-SBC 13 State –DPL – Physical Collocation, PC-1, at 1-3. and Level 3-SBC State – DPL- Virtual Collocation, VC-1, at 1-2.

<sup>34</sup> *Id.*

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283 SBC further argues that permitting Level 3 to pick and choose from two  
284 different sets of rates, terms and conditions would be administratively  
285 confusing and burdensome for SBC.<sup>35</sup> Moreover, SBC contends that there  
286 is no compelling reason to allow Level 3 to order out of a tariff, in addition  
287 to ordering from its interconnection agreement with SBC, which is the  
288 result of arms-length negotiation and arbitration.<sup>36</sup> In addition, SBC argues  
289 that to the extent that there is a change in law of which Level 3 seeks to  
290 take advantage, the Agreements provides a mechanism for doing so.<sup>37</sup>

291

292 In support, SBC cites a recent FCC Order regarding the adoption by a  
293 CLEC of another CLEC's interconnection agreement, in which the FCC  
294 determined that a requesting CLEC must adopt all of the rates, terms and  
295 conditions of such interconnection agreement, known as "all-or-nothing  
296 rule."<sup>38</sup> The new rule, SBC argues, has replaced the "pick-and-choose  
297 rule;" and as a result, Level 3 should not be allowed to pick and choose

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<sup>35</sup>SBC Ex. 5.0 at 3-4.

<sup>36</sup>*Id.* at 5.

<sup>37</sup>*Id.* at 5-6.

<sup>38</sup>*Id.* at 4-5.

298 between the rates, terms and conditions of its interconnection agreement  
299 and the state tariffs.<sup>39</sup>

300

301 **Q. What is your recommendation regarding the parties' positions?**

302 A. I recommend that the Commission accept SBC's proposals with some  
303 modifications to address Level 3 proposals.

304

305 **Q. What are the reasons for your recommendation?**

306 A. There are two reasons for my recommendation. First, SBC's proposal that  
307 "starting on the Effective Date of this Agreement," SBC will honor "any  
308 existing Section 251(c)(6) physical collocation arrangements that were  
309 provided under tariff prior to the effective date at the prices that apply  
310 under this Agreement." Thus, Level 3's concerns regarding its ability to  
311 "pick and choose" are overstated; its ability to pick and choose existing  
312 rates, terms and conditions is already available and included under this  
313 Agreement.

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315 Second, these parties seem to focus their attention in part on an issue that  
316 does not apply to the arbitration of interconnection agreement: Section

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<sup>39</sup>

*Id.*

317 252(i) of Telecommunications Act of 1996. Section 252(i) appears to  
318 apply only to a situation where a CLEC wants to adopt an existing  
319 interconnection agreement under which another CLEC currently operates,  
320 the so-called, "opt-in rule." Level 3's proposal does not appear to me to  
321 be an opt-in situation; rather, the issue is whether Level 3 should be  
322 allowed to buy from the state tariff when there is a change of tariffs or  
323 even if there isn't after this interconnection agreement has become  
324 effective, in spite of the fact that Level 3 has an existing interconnection  
325 agreement, the terms and conditions of which govern the purchase of the  
326 services it seeks to purchase under the tariff. Although SBC termed this as  
327 a "pick-and-choose" situation, this is not the case. However, it appears  
328 the parties do not address a situation where the rates, terms and  
329 conditions of this Agreement may be superceded by an SBC tariff. Neither  
330 the contract provisions proposed by SBC or Level 3 contemplate this  
331 occurrence. Since they do not address this issue, my recommendation is  
332 that SBC and Level 3 should only be permitted to order from effective SBC  
333 tariff or any tariff SBC might file in future as long this agreement does not  
334 contain rates, terms and conditions for the products or services Level 3  
335 seeks to purchase out of the tariff. This would prevent SBC's concern that

336 Level 3 proposals could lead to administrative confusion and burden  
337 SBC's business.

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339 **IV. TERMS AND CONDITIONS FOR COLLOCATION EQUIPMENT**

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341 **PC-2 – TERMS AND CONDITIONS FOR PHYSICAL COLLOCATION EQUIPMENT**

342 **VC-2 – TERMS AND CONDITIONS FOR VIRTUAL COLLOCATION EQUIPMENT**

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344 **Q. Please describe Issue PC-2, Terms and Conditions Governing**  
345 **Physical Collocation Equipment, Section 6.13, and, Issue VC-2,**  
346 **Terms and Conditions Governing Virtual Collocation Equipment,**  
347 **Sections 1.10.10 of the Agreement.**

348 **A.** The issue in both PC-2, Terms and Conditions Governing Physical  
349 Collocation and VC-2, Terms and Conditions Governing Virtual  
350 Collocation is identical. According to the parties, the issue is whether  
351 Level 3 should be permitted to collocate equipment that SBC has  
352 determined is not “necessary for interconnection or access to UNEs” or  
353 does not meet minimum safety standards?<sup>40</sup> In this instance, the parties  
354 were referring to the term “necessary for interconnection or access to  
355 UNEs” as used in Section 251(c)(6).

356

357 **Q. Please describe Level 3's position on this issue.**

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<sup>40</sup> See Level 3-SBC 13 State –DPL – Physical Collocation, PC-2, at 2-3 and Level 3-SBC State –  
DPL- Virtual Collocation, VC-2, at 2-3.

358 A. Level 3 argues that SBC should not be allowed to prevent Level 3 from  
359 collocating equipment as it sees fit until SBC determines the equipment is  
360 acceptable for placement; such action could unnecessarily delay Level 3's  
361 ability provide services to its customers, thereby placing it at a competitive  
362 disadvantage.<sup>41</sup> In addition, Level 3 contends that 47 C.F.R. 51.325(c)  
363 states that if an ILEC "objects to collocation of equipment by a requesting  
364 telecommunications carrier for purposes within the scope of Section  
365 251(c)(6) of the Act, the incumbent ILEC shall prove to the state  
366 commission that the equipment is not necessary for interconnection or  
367 access to unbundled network elements under the standards set forth in  
368 paragraph (h) of this section."<sup>42</sup> Also, Level 3 argues this rule does not  
369 allow SBC to preemptively deny collocation of equipment.<sup>43</sup> Furthermore,  
370 Level 3 observes that 47 C.F.R. 51.325(c) states in part, that an ILEC  
371 "may not object to the collocation of equipment on the grounds that the  
372 equipment does not comply with safety or engineering standards that are  
373 more stringent than the safety or engineering standards that the incumbent  
374 ILEC applies to its own equipment." Level 3 contends that SBC's language

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<sup>41</sup> Direct Testimony of Susan A. Bilderback, Level 3 Communications, LLC at 5-8.

<sup>42</sup> *Id.* at 6.

<sup>43</sup> *Id.*

not only is preemptive, but also creates ambiguity with respect to the proper level of safety standards.<sup>44</sup> Moreover, Level 3 contends that in its prior interconnection agreement with SBC, both parties agreed upon language that adequately balanced the respective interests of the parties which is not the same as the one “SBC seeks to have the Commission adopt in this proceeding.”<sup>45</sup> In addition, Level 3 believes “SBC is attempting to include onerous language that serves no other purpose than inappropriately vesting a critical, unconstrained determination in the hands of SBC.”<sup>46</sup> Finally, Level 3 argues it wants the Commission to strike a balance between Level 3’s rights to timely collocate its equipment and the SBC’s right to require that equipment that is not appropriate to be collocated isn’t.”<sup>47</sup>

**Q. Please describe SBC’s position on this issue.**

**A.** SBC contends that Level 3 should not be permitted to collocate equipment that SBC has determined is not necessary for interconnection or access to

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 7.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 8.

391 UNEs or does not meet minimum safety standards.<sup>48</sup> Furthermore, SBC  
392 argues that permitting such collocation threatens the integrity of SBC and  
393 others' networks and would permit Level 3 to ignore federal law.<sup>49</sup> SBC  
394 states that its proposed language provides a reasonable time period for  
395 Level 3 to remove any offending equipment.<sup>50</sup> SBC contends that Level 3  
396 did not provide any counter language to SBC's.<sup>51</sup> Finally, SBC states that  
397 contrary to Level 3's suggestion, nothing in SBC's language permits it to  
398 impose safety or engineering requirements that are more stringent than  
399 those that apply to SBC's own equipment.<sup>52</sup>

400  
401 **Q. What is your recommendation regarding the parties' positions?**

402 A. I recommend that SBC's proposals be accepted with some modification  
403 with Level 3 position.

404 **Q. What are the reasons for your recommendation?**

405 A. It needs to be pointed out that the parties did not address the term of art  
406 "necessary" but instead focus on the issue of equipment safety. As such,

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> SBC Ex. 5.0 at 6-7.

<sup>52</sup> *Id.* at 8.

407 my recommendation will address the issue of equipment and how that  
408 should be the focus of whether a collocation equipment should be allowed  
409 or not.

410

411 First, the issue of placement of collocation equipment requires that the  
412 parties take into account the safety of not only the equipment of Level 3  
413 and SBC, but also the safety of the entire network, which includes the  
414 equipment of all carriers. Network safety issues are always paramount. It  
415 is also a public interest issue as any threat to the network threatens  
416 service to all the end users. As a result it is reasonable to turn down any  
417 collocation request for equipment, which fails to meet the minimum safety  
418 standards.

419

420 Second, the period of ten (10) business days which SBC proposes to  
421 seems to be a reasonable notice period to resolve any issues of  
422 equipment collocation. Also, it appears Level 3 has additional means of  
423 collocation dispute resolution, as it may appeal to the Commission if any  
424 discussion between SBC and Level 3 fails to resolve the dispute. Thus,

425 this provision should help eliminate any concern by Level 3 that any  
426 dispute could remain in limbo for too long.

427

428 Third, the proposal by SBC that Level 3 should incur the cost of removal  
429 and resulting damages if the non-compliant equipment was already  
430 collocated is reasonable as it would be unfair to require SBC bears the  
431 cost of such removal and resulting damages.

432

433 Finally, in order to avoid this type of problem in the first place, SBC should  
434 make its list of equipment that meets its collocation requirement known to  
435 Level 3 as soon as there is a request for collocation of equipment from  
436 Level 3. This would save both parties time in either avoiding the  
437 placement of non-compliant in a collocation cage or resolution of any  
438 disagreement prior to collocation of non-compliant equipment by error.  
439 This step is also likely to prevent damages to the entire network that may  
440 affect other carriers in the entire network. Thus, such a move is in public  
441 interest.

442


443 **Q. Does this conclude your testimony?**

444 A. Yes

VERIFICATION

STATE OF ILLINOIS           )  
  ) SS  
COUNTY OF SANGAMON       )

I, A. Olusanjo Omoniye, do on oath depose and state that if called as a witness herein, I would testify to the facts contained in the foregoing document based upon personal knowledge.

  
\_\_\_\_\_

SIGNED AND SWORN TO BEFORE ME THIS 6<sup>th</sup> DAY OF  
October, 2004.

  
\_\_\_\_\_  
NOTARY PUBLIC

